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April 18, 2016

VIA Federal Express and Electronic Mail

Nicoletta Di Forte
US Environmental Protection Agency
Region 2; Mail Code: 19th Floor
290 Broadway
New York, New York 10007

Re: Lower 8.3 Miles of the Lower Passaic River

Dear Ms. Di Forte:

On behalf of my clients Occidental Chemical Corporation (“OxyChem”), Maxus Energy Corporation (“Maxus”), and Tierra Solutions, Inc. (“Tierra”), I wanted to thank you again for the opportunity to meet with you to discuss Region 2’s letter of March 31, 2016 regarding the remedial design process for the Lower 8.3 Miles of the Lower Passaic River. We appreciated your willingness to listen to our concerns regarding the letter and to provide some perspective regarding why Region 2 sent the letter that it did.

As we discussed at our recent meeting, we submit that Region 2’s agreeing to take steps to involve more major parties in the remedial design—such as by adding them to future correspondence soliciting participation in the remedial design and explicitly clarifying that those parties will not be exempt from future enforcement measures related to the remedial design should a voluntary agreement not be reached—would be constructive and would increase the likelihood of an agreement involving a small group of participating parties. We recognize that identifying major parties at such a complex site is not an easy task, and we are willing to immediately provide the information we have regarding those major parties to Region 2 to assist it in carrying out that task. To that end, we propose a meeting on either Thursday, April 21 or Friday, April 22 at Region 2’s offices, where we would provide specific information regarding the major parties for each of the contaminants of concern at the site. I will call Sarah Flanagan to see if we could arrange such a meeting.

My clients are still analyzing the ROD, Responsiveness Summary, and Region 2's correspondence and statements as they evaluate their potential response to Region 2's request to enter negotiations regarding performance of the remedial design. As we discussed at the meeting, however, my clients remain very concerned regarding the approach outlined in Region 2's March 31 letter, and we wanted to memorialize our comments regarding the remedial design process.

We request that Region 2 revisit its approach to the remedial design and issue the planned second letter regarding the remedial design for the Lower 8.3 Miles of the Passaic River to a reasonably small group of major parties, not just one party. We recognize Region 2's intention to try to accelerate the commencement of the remedial design process by dealing with a single, historically cooperative party instead of all of the more than 100 parties identified by Region 2 as liable for the Site, some of which have a history of recalcitrance in complying with Region 2 directives or have expressly declared their unwillingness to fund or perform any work associated with the ROD. And we acknowledge that involving all 100 such parties in the remedial design is not practical in the near term. But at the same time, we believe that singling out OxyChem is not only inequitable given its history of cooperation, but will be used by other parties as setting a precedent that will ultimately make it much harder to reach any voluntary agreement regarding any aspect of Region 2's selected remedy, whether for the remedial design, the remedial action, or for recovery of Region 2's past or future response costs.

Seeking to have a small group of "major PRPs" perform the remedial design—rather than simply have those major parties begin discussions regarding the remedial action as was suggested in the March 31, 2016 letter—is both more likely to yield an agreement for voluntary performance of the remedial design, and it is in keeping with the reality of the Site and with EPA practice, both within Region 2 and elsewhere, in addressing contaminated sediment "megasites."

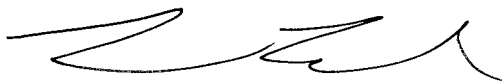
As Region 2's Record of Decision indicates, there are eight individual contaminants of concern at the Site, each of which requires remedial action to be taken. Six of those contaminants of concern are not meaningfully connected to the former 80 Lister Avenue facility, and each of the contaminants of concern has several "major PRPs" associated with it. We believe that assembling a group of such "major PRPs" to participate in the discussions regarding, and eventual performance of, the remedial design work—either as a working party or a funding party, and pursuant to a streamlined, simplified allocation methodology that will

allow work to begin promptly without setting a precedent for the complex and certainly contentious allocation process for the remedial action—is the most likely path to reaching Region 2's goal of obtaining a near-term voluntary agreement to perform the remedial design.

As we have noted before, we have significant concerns regarding the unintended future consequences of certain statements made by Region 2 in the March 31, 2016 letter and Region 2's proposal that OxyChem consider being the sole party responsible for the remedial design. We believe that Region 2's approach will be misused—indeed, already has been misused—by certain other parties to suggest that Region 2 has taken a position on the ultimate responsibility related to the ROD, and will lead other parties to conclude that the public statements of recalcitrance regarding the ROD made by certain groups of parties have successfully deterred Region 2 from pursuing those parties. We further believe that these considerations will create long-term obstacles to future negotiations regarding cooperation among the many parties at this Site, which will cause significant delays in the actual performance of remedial action at the Site that will outweigh any benefits to the short-term design schedule associated with focusing on a single party to perform the remedial design.

We appreciate your consideration of this request. Please feel free to contact me if you have any questions or would like to discuss this matter

Very truly yours,



Benjamin S. Lippard

cc: Raymond J. Basso, EPA Region 2
Sarah P. Flanagan, EPA Region 2
Juan M. Fajardo, EPA Region 2
Laura Rowley, DOJ